

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEPHANIE S. HODGE, ) CASE NO. C12-5321-JLR-MAT  
Plaintiff, )  
v. )  
CAROLYN W. COLVIN<sup>1</sup>, ) REPORT AND RECOMMENDATION  
Acting Commissioner of Social Security, ) RE: SOCIAL SECURITY DISABILITY  
Defendant. ) APPEAL  
 )  
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15 Plaintiff Stephanie S. Hodge proceeds through counsel in her appeal of a final decision  
16 of the Commissioner of the Social Security Administration (Commissioner). The  
17 Commissioner denied plaintiff's applications for Disability Insurance Benefits (DIB) and  
18 Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge  
19 (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all  
20 memoranda of record, the Court recommends that this matter be REMANDED for further

<sup>22</sup> 1 Pursuant to Federal Rule of Civil Procedure 25(d)(1), Carolyn W. Colvin, Acting Commissioner of Social Security, is substituted for Michael J. Astrue as the defendant in this suit.

01 proceedings.

02 **FACTS AND PROCEDURAL HISTORY**

03 Plaintiff was born on XXXX, 1972.<sup>2</sup> She has a high school education. The  
 04 Commissioner concedes error in the ALJ's finding that plaintiff's previous employment as a  
 05 new car delivery driver constituted past relevant work. (AR 21; Dkt. 19 at 21.)

06 Plaintiff filed an application for DIB and protectively for SSI on September 10, 2008,  
 07 alleging disability beginning January 1, 2008. (AR 14.) She is insured for DIB through  
 08 December 31, 2012. Plaintiff's applications were denied at the initial level and on  
 09 reconsideration. Plaintiff timely requested a hearing.

10 On June 21, 2010, ALJ Steve Lynch held a hearing, taking testimony from plaintiff and  
 11 a vocational expert. (AR 26-48.) On August 17, 2010, the ALJ issued a decision finding  
 12 plaintiff not disabled. (AR 14-21.)

13 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review  
 14 on February 9, 2012 (AR 1-6), making the ALJ's decision the final decision of the  
 15 Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

16 **JURISDICTION**

17 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

18 **DISCUSSION**

19 The Commissioner follows a five-step sequential evaluation process for determining  
 20 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it

21 \_\_\_\_\_  
 22 2 Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of  
 Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case  
 Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had  
02 not engaged in substantial gainful activity (SGA) since the alleged onset date. At step two, it  
03 must be determined whether a claimant suffers from a severe impairment. The ALJ found  
04 plaintiff's personality disorder and substance abuse in partial remission severe. The ALJ  
05 found plaintiff's bipolar disorder and hip and foot pain non-severe. Step three asks whether a  
06 claimant's impairments meet or equal a listed impairment. The ALJ found that plaintiff's  
07 impairments did not meet or equal the criteria of a listed impairment.

08 If a claimant's impairments do not meet or equal a listing, the Commissioner must  
09 assess residual functional capacity (RFC) and determine at step four whether the claimant has  
10 demonstrated an inability to perform past relevant work. The ALJ found plaintiff able to  
11 perform less than the full range of medium work as defined in 20 C.F.R. §§ 404.1657(c) and  
12 416.967(c); able to lift and carry fifty pounds occasionally and twenty five pounds frequently;  
13 able to stand, walk, and sit for six out of eight hours; and limited to performing simple, routine  
14 tasks, and having no interaction with the public.

15 With that assessment, the ALJ found plaintiff able to perform her past relevant work as  
16 a new car delivery driver. If a claimant demonstrates an inability to perform past relevant  
17 work, the burden shifts to the Commissioner to demonstrate at step five that the claimant retains  
18 the capacity to make an adjustment to work that exists in significant levels in the national  
19 economy. Finding plaintiff not disabled at step four, the ALJ did not proceed to step five.

20 This Court's review of the ALJ's decision is limited to whether the decision is in  
21 accordance with the law and the findings supported by substantial evidence in the record as a  
22 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means

01 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
 02 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
 03 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
 04 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
 05 F.3d 947, 954 (9th Cir. 2002).

06 Plaintiff argues the ALJ failed to properly evaluate the medical evidence, failed to  
 07 properly evaluate her testimony, and failed to properly conduct the evaluation of listed  
 08 impairments at step three. Plaintiff argues the ALJ failed to fully account for all her limitations  
 09 in the RFC, and erred in finding her able to perform her past relevant work. She requests  
 10 remand for an award of benefits or, alternatively, for further administrative proceedings. The  
 11 Commissioner concedes the ALJ erred in designating the job of new car delivery driver as past  
 12 relevant work, but disputes plaintiff's remaining assignments of error. The Commissioner  
 13 agrees the case should be remanded for a new hearing.

14 Step Two Impairments

15 At step two, a claimant must make a threshold showing that his medically determinable  
 16 impairments significantly limit his ability to perform basic work activities. *See Bowen v.*  
 17 *Yuckert*, 482 U.S. 137, 145 (1987) and 20 C.F.R. §§ 404.1520(c), 416.920(c). “Basic work  
 18 activities” refers to “the abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§  
 19 404.1521(b), 416.921(b). “An impairment or combination of impairments can be found ‘not  
 20 severe’ only if the evidence establishes a slight abnormality that has ‘no more than a minimal  
 21 effect on an individual’s ability to work.’” *See Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.  
 22 1996 (quoting Social Security Ruling (SSR) 85-28). “[T]he step two inquiry is a de minimis

01 screening device to dispose of groundless claims.” *Id.* (citing *Bowen*, 482 U.S. at 153-54).  
 02 An ALJ is also required to consider the “combined effect” of an individual’s impairments in  
 03 considering severity. *Id.*

04 A diagnosis alone is not sufficient to establish a severe impairment. Instead, a claimant  
 05 must show his medically determinable impairments are severe. 20 C.F.R. §§ 404.1520(c),  
 06 416.920(c).

07 A. Bipolar Disorder

08 The ALJ did not find plaintiff’s bipolar disorder severe, stating:

09 This may be an alternate diagnosis of claimant’s mental health problems.  
 10 Treatment records indicate that this impairment is stabilized with medication,  
 11 and analysis of disability is not changed, whether the analysis is conducted  
 12 under 12.04 or 12.08 of the listings of the Commissioner. As a result, I find that  
 13 the claimant’s bipolar disorder is a non-severe medically determinable  
 14 impairment.

15 (AR 16, citations to record omitted.)

16 Plaintiff argues the ALJ’s analysis is “fundamentally flawed,” noting the ALJ’s failure  
 17 to acknowledge the diagnosis of this condition by her treating providers at Columbia River  
 18 Mental Health. The ALJ, however, acknowledged that plaintiff had been diagnosed with this  
 19 condition. Rather, the ALJ found the condition not severe, that is, not significantly affecting  
 20 plaintiff’s ability to perform basic work activities. Plaintiff fails to show any evidence to the  
 21 contrary, or to explain any additional impact the condition would have in combination with  
 22 other severe impairments.

B. Intermittent Bilateral Sacroiliac Discomfort and Foot Pain

Likewise, plaintiff fails to show any limitations resulting from the intermittent bilateral

01 sacroiliac discomfort and foot pain listed as a diagnosis by consulting examiner Dr. Ramsthel.  
 02 (AR 321.) As noted by the Commissioner, plaintiff did not seek any treatment for these  
 03 conditions, and the ALJ appropriately deemed the conditions not severe.

04 Plaintiff, in short, fails to set forth any evidence supporting her assertion that her bipolar  
 05 disorder, intermittent bilateral sacroiliac discomfort, or foot pain were severe impairments, or  
 06 to otherwise demonstrate error in the ALJ's step two decision.

07 Step Three

08 At step three of the sequential evaluation, the ALJ must consider whether the claimant's  
 09 impairments meet or equal one of the impairments in the "Listing of Impairments" set forth in  
 10 Appendix 1 to 20 C.F.R. Part 404, Subpart P. "In evaluating a claimant with more than one  
 11 impairment, the Commissioner must consider 'whether the combination of your impairments is  
 12 medically equal to any listed impairment.'" *Lester v. Chater*, 81 F.3d 821, 829 (9th Cir. 1995).  
 13 Plaintiff bears the burden of proving the existence of impairments meeting or equaling a listing.  
 14 *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005).

15 Here, the ALJ found that plaintiff's mental impairments, considered singly and in  
 16 combination, did not meet or medically equal the criteria of listing 12.08 ("Personality  
 17 Disorders") or 12.09 ("Substance Addiction Disorders"). 20 C.F.R. Pt. 404, Subpt. P, App. 1,  
 18 §§ 12.08, 12.09. Specifically, the ALJ found plaintiff's impairments did not satisfy the  
 19 requirement of severe or marked limitations in at least two of the following: activities of daily  
 20 living; social functioning; concentration, persistence or pace; or extended episodes of  
 21 decompensation. (AR 17.) The ALJ also noted the analysis of disability would not change if  
 22 plaintiff's mental disorders were considered at listing 12.04 ("Affective Disorders") instead of

01 12.08.

02 Plaintiff does not dispute the ALJ's conclusion that her impairments do not meet the  
 03 listing requirements for 12.08 or 12.09. Instead, she argues the ALJ should have considered  
 04 her listing under 12.04, which, unlike listing 12.08, includes "C paragraph" criteria. The  
 05 Court, however, finds plaintiff's argument unavailing.

06 For an impairment to meet the listing requirement of 12.04, the claimant must either  
 07 meet the B paragraph criteria or the C paragraph criteria. The B criteria for listing 12.04 is the  
 08 same as listing 12.08. The ALJ found plaintiff's impairment did not meet the B criteria and  
 09 plaintiff does not dispute this finding. The C criteria for listing 12.04 requires:

10 Medically documented history of a chronic affective disorder of at least  
 11 2 years' duration that has caused more than a minimal limitation of ability to do  
 12 basic work activities, with symptoms or signs currently attenuated by medical or  
 13 psychosocial support, and one of the following:

14 1. Repeated episodes of decompensation, each of extended duration;  
 15 **or**

16 2. A residual disease process that has resulted in such marginal  
 17 adjustment that even a minimal increase in mental demands or change in the  
 18 environment would be predicted to cause the individual to decompensate, **or**

19 3. Current history of 1 or more years' inability to function outside a  
 20 highly supportive living arrangement, with an indication of continued need for  
 21 such an arrangement.

22 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04 (emphasis added).

23 Although plaintiff asserts that she meets the C criteria of Listing 12.04, she fails to  
 24 explain how the medical evidence shows she is so marginally adjusted as a result of her mental  
 25 disorders that even a minimal change in mental demands or environment would cause her to  
 26 decompensate. While asserting she has cited "four pages of records from Columbia River

01 Mental Health as well as the evaluations by Dr. Moore and Dr. Sekiya which would support  
 02 such a finding" (Dkt. 20 at 11), plaintiff leaves the Court to guess what specific evidence in  
 03 those pages of documents support her argument that she meets the stringent criteria of the  
 04 listing. The Court's review of the records does not reveal any evidence that would support  
 05 such a finding.

06 The Court finds no error in the ALJ's step three findings. At any rate, if plaintiff feels  
 07 the medical evidence supports a presumptive finding of disability at step three, she is free to  
 08 present such evidence to the ALJ on remand.

09 Medical Opinion Evidence

10 Plaintiff's assignment of error to the ALJ's evaluation of the medical opinion evidence  
 11 is similarly deficient – she catalogues bits and pieces of medical records not mentioned by the  
 12 ALJ, providing no explanation or argument as to why the omissions had any bearing on the  
 13 ALJ's ultimate finding.

14 A. Records from Columbia River Mental Health "and Other Treating Sources"

15 Plaintiff argues the ALJ erred by failing to discuss "any" of the medical evidence from  
 16 Columbia River Mental Health (CRMH). (Dkt. 12 at 8.)<sup>3</sup> To the contrary, as plaintiff  
 17 apparently acknowledges in her reply brief (Dkt. 20 at 5-6), the ALJ referred to records from  
 18 CRMH throughout the decision. (See, e.g., AR 16 (citing AR 306, 319); AR 18 (citing AR  
 19 170-73, 202-38); AR 19 (citing AR 202-38, 306, 319); AR 20 (citing AR 306-07).) The ALJ  
 20 also considered the opinions of doctors who themselves discussed CRMH's records. (See,

21  
 22 3 It is unclear which other providers plaintiff asserts were overlooked by the use of the term  
 "other treating sources."

01 *e.g.*, AR 19-20 (citing AR 243, 248, 366.).

02 B. Lawrence H. Moore, Ph.D.

03 The ALJ gave “significant weight” to the opinion of examining psychologist Lawrence  
04 H. Moore. (AR 19.) Plaintiff argues the ALJ failed to state a reason for rejecting Dr. Moore’s  
05 opinion that she had sedation possibly related to her medication.

06 As the Commissioner notes, plaintiff’s mental status examination conducted by Dr.  
07 Moore was within normal limits. The MMPI-2 revealed a “highly invalid profile” in which  
08 plaintiff “appeared to over-exaggerate and amplify the nature of her psychiatric condition.”  
09 (AR 245.) Dr. Moore found possible malingering, but did not reach a formal diagnosis of  
10 such. (*Id.*) Dr. Moore noted that plaintiff appeared “notably sedated and lethargic”,  
11 questioning whether she was over-medicated or taking her medication at inappropriate dosages,  
12 and recommended a review of her medication regime. (AR 245-46.) In other words, Dr.  
13 Moore’s report does not support the assessment of a restriction on driving due to plaintiff’s  
14 medication; rather, Dr. Moore felt her medication dosages should be adjusted if she was  
15 experiencing these side effects. The ALJ correctly noted that the medication would not be a  
16 *per se* prohibition on any driving jobs other than as a semi-truck driver, a job the ALJ did not  
17 find plaintiff could perform. (AR 18.) The ALJ took into account plaintiff’s personality  
18 disorder and her reported sedating side effects in finding her restricted from working with the  
19 public and limited to performing simple, routine tasks. (AR 20.)

20 The Court does not find error in the ALJ’s consideration of Dr. Moore’s opinions.

21 C. Utako Sekiya, M.D.

22 The ALJ gave “little weight” to the opinion of evaluating psychiatrist Dr. Sekiya, who

01 found plaintiff incapable of performing any tasks or work activity on a consistent basis due to  
02 “her severe anger problem and relapse into cannabis abuse.” (AR 19.) The ALJ noted that  
03 Dr. Sekiya “did not have the benefit of reviewing other medical reports that indicate the  
04 claimant’s symptoms are controlled with medication[,]” finding Dr. Sekiya’s assessment based  
05 primarily on plaintiff’s presentation during the evaluation while under the influence of  
06 marijuana. Because plaintiff testified her marijuana use was only occasional, the ALJ  
07 concluded plaintiff’s presentation to Dr. Sekiya under the influence of marijuana was not her  
08 normal state, and did not rely on Dr. Sekiya’s conclusions. (AR 19, 31, 251.)

09 Plaintiff disputes the ALJ’s assessment of Dr. Sekiya’s opinion as based primarily on  
10 plaintiff being under the influence during the evaluation. Plaintiff also contends it was not  
11 legitimate for the ALJ to rely on the fact that Dr. Sekiya did not review later medical reports.

12 The Court finds no error in the ALJ’s assessment of Dr. Sekiya’s opinions. The  
13 regulations specifically provide that the extent to which a medical evaluator is familiar with the  
14 other information in the claimant’s case record is a relevant factor in deciding the weight to be  
15 given to a medical opinion. 20 C.F.R. §§ 404.1527(c)(6), 416.927(c)(6). Furthermore, a  
16 review of Dr. Sekiya’s report clearly indicates the impact of plaintiff’s cannabis intoxication on  
17 her presentation during the examination. (AR 248 (“She appears to be under the influence of  
18 this substance, not consistently being able to be attentive enough to this interview.”; AR 249  
19 (“She has noticeably decreased concentration and attention... She appears to be under the  
20 influence of Cannabis with mild to moderate psychomotor retardation... Her affect is  
21 inattentive and blunted.”)) The ALJ, therefore, reasonably gave little weight to the assessment  
22 based on plaintiff’s presentation under the influence of marijuana.

01 D. Todd Bowerly, Ph.D.

02 Dr. Bowerly also conducted a psychological evaluation of claimant. (AR 366-72.)  
03 He opined that plaintiff demonstrated adequate understanding, reasoning, persistence,  
04 attention/concentration, memory, social interaction skills, and adaptation abilities. Dr.  
05 Bowerly indicated plaintiff "may have some mild social difficulties due to personality factors,  
06 but presents as appropriate and describes herself as currently stable on medications." (AR 372.)  
07 The ALJ gave significant weight to Dr. Bowerly's opinion of plaintiff's mental abilities. (AR  
08 19-20.)

09 Plaintiff contends Dr. Bowerly based his opinion on incomplete records, and argues the  
10 ALJ erred by failing to acknowledge this. Specifically, plaintiff's contention is that Dr.  
11 Bowerly did not specify which records from CRMH he reviewed, and made no mention of Dr.  
12 Sekiya's report. Plaintiff concludes that either the ALJ chose to not provide complete records  
13 to Dr. Bowerly, or the doctor did not review all the records he received.

14 Plaintiff's contention that records were either "accidentally or intentionally withheld  
15 from Dr. Bowerly" (Dkt. 20 at 7) is based on a lack of mention of the records in Dr. Bowerly's  
16 report. However, plaintiff fails to specify which findings or opinions from either Dr. Sekiya or  
17 providers at CRMH were ignored, or to explain how Dr. Bowerly's opinions would have  
18 changed if the documents had been considered.

19 There is no requirement that an examiner list or even discuss every document in the  
20 claimant's medical record. Even if it can be shown that an examiner overlooked or was not  
21 provided certain records, plaintiff bears the burden of showing any such omissions were  
22 prejudicial. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) ("[T]he burden of showing

01 that an error is harmful normally falls upon the party attacking the agency's determination.””)  
02 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009)). Plaintiff fails to persuade this Court  
03 that the ALJ erred in evaluating Dr. Bowerly’s opinions.

04 E. Donald D. Ramsthel, M.D.

05 Dr. Ramsthel conducted a consultative physical evaluation of plaintiff. (AR 321-25.)  
06 He assessed “significant mental issues,” as well as “some bilateral sacroiliac discomfort,  
07 intermittently” and “some intermittent pains in her feet”, plus tobacco abuse and homelessness.  
08 (AR 324.)

09 The ALJ gave limited weight to Dr. Ramsthel’s RFC assessment limiting plaintiff to  
10 essentially light exertional work. The ALJ noted that plaintiff reported having no medical  
11 treatment for her hip or foot pain, drawing the conclusion that plaintiff’s symptoms are not  
12 severe and would not have more than a minimal effect on her ability to perform work. The  
13 ALJ found Dr. Ramsthel’s RFC limitations not consistent with the medical record.

14 Plaintiff contends these reasons are not legitimate, arguing Dr. Ramsthel based his  
15 opinion on “his objective findings of tenderness to palpation over both SI areas and absent  
16 Achilles reflexes bilaterally.” (Dkt. 12 at 16.) Dr. Ramsthel himself, however, did not draw  
17 this conclusion. While the doctor noted plaintiff’s reported tenderness to palpation over both  
18 SI (sacroiliac) areas, he also noted the absence of tenderness to palpation in her feet. (AR  
19 324.) Deep tendon reflexes were all 1+, with the exception of the absent Achilles reflex  
20 bilaterally. (*Id.*) These findings are simply noted – Dr. Ramsthel does not indicate that they  
21 are significant, or connect them to plaintiff’s reported problems. (*Id.*)

22 An ALJ may properly assign less weight to a physician’s opinion that is inconsistent

01 with the medical record. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008).  
 02 Likewise, the ALJ is entitled to draw inferences logically flowing from the evidence. *Sample*  
 03 *v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982) (cited sources omitted). An ALJ may  
 04 permissibly infer that a claimant's pain is not as disabling as alleged in light of the claimant's  
 05 failure to seek treatment for an allegedly disabling condition. *Tommasetti*, 553 F.3d at 1039.  
 06 The ALJ, in sum, properly considered Dr. Ramsthal's opinions.

07 F. Steven T. Haney, M.D.

08 Dr. Haney completed a Mental RFC Assessment [MRFCA] and Psychiatric Review  
 09 Technique form. (AR 252-68.) Plaintiff argues the ALJ erred by failing to include certain  
 10 limitations endorsed by Dr. Haney, although she mischaracterizes these moderate limitations as  
 11 "marked." (AR 252-53; Dkt. 12 at 16.) In fact, Dr. Haney later characterizes the interference  
 12 of these limitations on plaintiff's ability to maintain work as minimal. (AR 254.)

13 Furthermore, as the Commissioner notes, the opinions cited by plaintiff appear in the  
 14 "Summary Conclusions" portion of Dr. Haney's report, which the ALJ is not required to  
 15 consider. *See* Program Operations Manual System (POMS) DI 25020.010 at B.1 ("The  
 16 purpose of section I . . . on the [MRFCA] is chiefly to have a worksheet to ensure that the  
 17 psychiatrist or psychologist has considered each of these pertinent mental activities and the  
 18 claimant's or beneficiary's degree of limitation for sustaining these activities over a normal  
 19 workday and workweek on an ongoing, appropriate, and independent basis. It is the narrative  
 20 written by the psychiatrist or psychologist in section III . . . of [the MRFCA] that adjudicators

21

22

01 are to use as the assessment of RFC.”)<sup>4</sup> Plaintiff, for these reasons, fails to establish error in  
02 the ALJ’s consideration of the opinions of Dr. Haney.

## Credibility

44 The ALJ did not credit plaintiff's testimony that she was unable to work due to bipolar  
45 disorder, anxiety, and depression. (AR 18.) Rather, the ALJ found plaintiff's mental health  
46 symptoms to be well controlled when she is not abusing alcohol or drugs and taking her  
47 medications as prescribed. (AR 20.) Plaintiff argues the ALJ failed to properly evaluate her  
48 testimony regarding her symptoms and limitations, arguing none of the reasons given by the  
49 ALJ are specific, clear, or convincing.

10 First, plaintiff argues the ALJ's failure to properly evaluate the medical evidence tainted  
11 his evaluation of her testimony. However, as set forth above, the Court finds no error in the  
12 consideration of the medical evidence. The effectiveness of a claimant's medication to  
13 alleviate symptoms is a relevant factor to be considered by the ALJ. 20 C.F.R. §§  
14 404.1529(c)(3)(iv), 416.929(c)(3)(iv). Conditions that can be controlled effectively with  
15 medication are not considered disabling. *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d  
16 1001, 1006 (9th Cir. 2006).

17 Plaintiff also argues the ALJ erred in considering her “long history of success as a  
18 driver” (AR 20), because the medical records indicate she is unable to return to her work as a  
19 truck driver. However, the ALJ did not find plaintiff able to work as a truck driver, noting the  
20 prescription medications would prevent her from driving tractor-trailer units. (AR 18.)

<sup>22</sup> 4 Although the POMS “does not have the force of law” it “is persuasive authority.” *Warre v. Commissioner of the Soc. Sec. Admin.*, 439 F.3d 1001, 1005 (9th Cir. 2006).

01 Rather, the ALJ found plaintiff able to perform work as a new car delivery driver, a finding  
 02 which is the subject of a stipulated remand, as discussed below. The Commissioner concedes  
 03 the ALJ erred in concluding plaintiff's past work as a car driver met the requirements of SGA.  
 04 (Dkt. 19 at 21.) However, any error as it applies to the credibility assessment is harmless, since  
 05 the ALJ provided another valid reason for discounting plaintiff's subjective complaints.  
 06 *Molina*, 674 F.3d at 1115 ("an error is harmless so long as there remains substantial evidence  
 07 supporting the ALJ's decision and the error 'does not negate the validity of the ALJ's ultimate  
 08 decision'") (cited sources omitted).

09 Plaintiff does not establish error in the ALJ's consideration of her credibility.

10 Residual Functional Capacity

11 At step four, the ALJ must identify the claimant's functional limitations or restrictions,  
 12 and assess his or her work-related abilities on a function-by-function basis, including a required  
 13 narrative discussion. *See* 20 C.F.R. §§ 404.1545, 416.945; SSR 96-8p. RFC is the most a  
 14 claimant can do considering his or her limitations or restrictions. *See* SSR 96-8p. The ALJ  
 15 must consider the limiting effects of all of claimant's impairments, including those that are not  
 16 severe, in determining RFC. §§ 404.1545(e), 416.945(e); SSR 96-8p.

17 Plaintiff's argument that the ALJ erred in assessing her RFC is derivative of her other  
 18 assignments of error. As the Court finds no error in the ALJ's assessment of the medical  
 19 evidence or plaintiff's credibility, this assignment of error also fails.

20 Assessment of Ability to Perform Past Relevant Work

21 The Commissioner concedes error at step four, agreeing the ALJ's finding that plaintiff  
 22 had past relevant work as a new car delivery driver lacks the support of substantial evidence.

01 (Dkt. 19 at 21.) Plaintiff's performance of this work for only one month in July 2007 was of  
02 insufficient duration to constitute SGA, as she earned less than the relevant SGA threshold of  
03 \$900. 20 C.F.R. §§ 404.1560(b)(1), 404.1574, 416.960(b)(1), 416.974. (AR 116, 123.)

04 Remand for further administrative proceedings is appropriate if enhancement of the  
05 record would be useful. *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). *See also*  
06 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1167 (9th Cir. 2008) (remanding for  
07 further proceedings where ALJ erred in evaluating past relevant work at step four, directing  
08 ALJ to proceed to step five if necessary). Here, the Court concludes further administrative  
09 proceedings would be useful.

10 **CONCLUSION**

11 For the reasons set forth above, this matter should be REMANDED for further  
12 administrative proceedings.

13 DATED this 25th day of March, 2013.

14  
15   
16 Mary Alice Theiler  
United States Magistrate Judge

21